

L230 Settlement Proposal
April 9, 2009

1. Extend without change or modification all economic terms and conditions of the existing Memorandum of Understanding covering the wages, hours and benefits of Local 230 members for a period of one year from July 1, 2009 until June 30, 2010;

The intent of #1 is to freeze base wage compensation (0% increase) that would otherwise increase by virtue of a general wage increase. In doing so Local 230 seeks to assist policymakers in maintaining all current fire companies and stations and to limit negotiations to non-economic issues for the July 2009-June, 2010 term of agreement. This freeze does not effect step or promotional increases.

2. For purposes of future negotiations all parties agree that this freeze in compensation does not necessarily place Local 230 members in the appropriate labor market position.
3. Implement the 48/96 work schedule as soon as possible after January 1, 2010 under the same conditions proposed by L230 in the last negotiations (see addendum)
4. City to enact a Disability Earnings Ordinance as soon as possible and no later than September 1, 2009 consistent with the attached memo to the Rules Committee of November 26, 2008. (see addendum)
5. City and L230 to immediately incorporate into Article 20 of the MOU the "Fire Fighter Bill of Rights" as mandated by state law. (see addendum)

Thank you,

Randy Sekany, President L230

UNION'S FINAL PROPOSAL ON ISSUE NUMBER 25 - 48/96 WORK
SCHEDULE

ARTICLE 14 HOURS OF WORK AND OVERTIME

14.11.2 Effective January 1, 2008 or as soon thereafter as practicable, the fifty-six (56) hour shift shall be worked on a 48/96 schedule for a period of one year. At any time during this year, the Union or the Department may elect to revert back to the current schedule from the 48/96 schedule.

MEMORANDUM

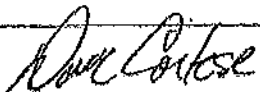
TO: Rules Committee

FROM: Vice Mayor Dave Cortese

SUBJECT: Disability Earnings Ordinance

DATE: November 26, 2008

APPROVED:



DATE:

RECOMMENDATION

It is recommended that the Rules Committee direct staff to bring to Council within 45 days a draft ordinance that legally classifies supplemental disability income as compensation earned in the context of a workers compensation program

BACKGROUND

Under current state statute (Labor Code 4850), a police officer or fire fighter in the State of California, if injured in the course of employment, is afforded the equivalency of his/her full salary through workers compensation benefits, provided that he/she is a member of the Public Employees Retirement System (PERS) or is covered under the 1937 County Retirement Act. Furthermore, the employee is not required to pay taxes on these benefits.

Labor Code 4850 does not apply to City of San Jose Fire Fighters and Police Officers; they are not covered by PERS or the County Act. If a fire fighter or police officer in the City of San Jose is injured in the course of employment, he/she can receive workers compensation and a supplement provided by the city, the total amount equivalent to the employee's gross income. However, the supplement provided by the City is subject to taxation.

ANALYSIS

The discussion of how to exclude supplemental disability income from taxation has been a topic of significant debate here in San Jose. Both city staff and our public safety unions have presented information in support of their positions on this matter. The overall intent of such an ordinance is to equalize the rights of public safety officers in San Jose with their counterparts throughout California. As stated above, public safety employees who are injured on the job, by virtue of their coverage under Labor Code 4850, not only receive their full salary in the form of disability payments but also do not have to pay taxes on those payments. The City of San Jose has already taken the important step of giving injured public safety officers their full salary through a combination of disability payments and a supplemental. The final step towards making such officers and their families whole is to legally classify the "supplemental" as compensation earned in the context of a workers compensation program. By doing so, such income will not have to be reported and therefore the officer would not be taxed for it.

Recently, the Internal Revenue Service offered an opinion (attached) in support of a chartered city in California that adopted a similar ordinance. This new information should give important leverage to the City of San Jose in our quest to enact a similar ordinance.

Given that such an ordinance has zero fiscal impact to the General Fund and recognizing the importance of helping injured officers and their families to have as much financial security possible, the City should act expeditiously in adopting such an ordinance here in San Jose. A sample ordinance has been provided to assist staff in their analysis.

Westlaw

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Internal Revenue Service (I.R.S.)
Private Letter Ruling
February 13, 1979

Section 104 -- Compensation for Injuries and Sickness (Excluded v. Not Excluded)

104.00-00 Compensation for Injuries and Sickness (Excluded v. Not Excluded)

104.02-00 Workmen's Compensation

T:I:I:1:1

X = ***

Y = ***

Z = ***

Dear Sir or Madam:

This is in reply to your letter of September 26, 1978, and subsequent correspondence, in which you request rulings concerning the federal income tax consequences of certain payments which are made to City employees suffering from job-incurred disability.

Section 253 of X provides:

'Except as hereinafter provided, any city employee who is disabled, whether temporarily or permanently, by injury or illness arising out of and in the course of his duties, shall be entitled to such medical, surgical, and hospital treatment, including nursing, medicines and medical and surgical supplies and apparatus as may be required on account of such injury or illness, the same to be provided by the city. Such employee shall become entitled during the period of such temporary disability, regardless of his period of service with the city, to leave of absence while so disabled without loss of salary, in lieu of temporary disability payments, if any, which would be payable under Division 4 of the Labor Code of the State of [Y] for the period of such disability, but not exceeding one year, or until such earlier date as he is retired upon a retirement allowance. Compensation and benefits payable to or on behalf of the employee under this section shall be reduced in the manner fixed by the city council, by the amount of any compensation and benefits payable to or on behalf of said employee under Division 4 of the Labor Code of the State of [Y]. Compensation and benefits paid under this section shall be considered as in lieu of compensation and benefits payable to or on ac-

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count of said employee under said state law and shall be in satisfaction and discharge of the obligation of the city to pay such compensation and benefits under such state law. The benefits provided in this section shall be limited to full-time officers and employees of the city and, except as provided herein, shall not be extended to persons employed by the city on a seasonal, limited-term, part-time or substitute basis, or elective officers or appointive members of city boards and commissions. The city council, by ordinance enacted by two-thirds of all members thereof, may permit employees of the city, other than full-time officers and employees of the city, to receive all or a portion of the compensation and benefits provided to full-time officers and employees by the provisions of this section.'

Certain other City employees receive comparable benefits under section 167 of X (repealed 12--31--76) which provided:

'Any city employee who is a member of the [Z] City Employees Retirement System and who shall become physically disabled by reason of any bodily injury received in the performance of his duty shall be entitled to such medical, surgical, and hospital treatment, including nursing, medicines and medical and surgical supplies and apparatus as may be required on account of such injury, the same to be provided by the city. Such injured employee shall receive full pay from the city during the continuance of his disability or until retired upon a retirement allowance, but not to exceed one year. Compensation and benefits payable to or on behalf of the employee under this section shall be reduced, in the manner fixed by the city council, by the amount of any compensation and benefits payable to or on behalf of said employee under Division 4 of the Labor Code of the State of [Y]. Compensation and benefits paid under this section shall be considered as in lieu of compensation and benefits payable to or on account of said employee under said state law and shall be in satisfaction and discharge of the obligation of the city to pay such compensation and benefits under such state law.

The city council, by ordinance enacted by two-thirds of all members thereof, may permit employees of the city, other than those who are members of the retirement system, to receive all or a portion of the compensation and benefits provided to members of the retirement system by the provisions of this section.'

You state that the chief difference between section 253 and former section 167 is that former section 167 provides for full pay while temporarily or permanently disabled whereas section 253 provides for such pay while temporarily disabled. Under both sections, full salary continues until the employee (1) is no longer disabled, (2) is retired, or (3) one year lapses.

You further state that Division 4 of the Y Labor Code, to which reference is made in sections 167 and 253, is contained in Labor Code sections 3200--6002. Division 4 provides worker's compensation benefits for employees who are industrially injured. The benefits provided are less than full salary which is provided under Charter sections 253 and 167. Labor Code section 4652 excludes payment for

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the first three days of disability, whereas under Charter section 253 and 167 the employee receives full pay from the first day of disability. Labor Code sections 4653 and 4654 provide, respectively, for two-thirds pay for temporary total disability and temporary partial disability whereas Charter sections 253 and 167 provide full pay.

You request rulings whether (1) the payments to an employee under section 253 or former section 167 of X are excludable under section 104(a)(1) of the Code and (2) if the payments are excludable, whether the portion of the payment which is in excess of the amount of workmen's compensation benefits provided by sections 4652--4664 of the Y Labor Code are includible in gross income.

Section 104(a)(1) of the Code provides, in pertinent part and with certain exceptions not here pertinent, that gross income does not include amounts received under workmen's compensation acts as compensation for personal injuries or sickness.

Section 1.104-1(b) of the Income Tax Regulations states that section 104(a)(1) of the Code excludes from gross income amounts received by an employee under a workmen's compensation act or under a statute in the nature of a workmen's compensation act that provides compensation to the employee for personal injuries or sickness incurred in the course of employment. Section 104(a)(1) of the Code also applies to compensation which is paid under a workmen's compensation act to the survivor or survivors of a deceased employee. However, section 104(a)(1) does not apply to a retirement pension or annuity to the extent that it is determined by reference to the employee's age or length of service, or the employee's prior contributions, even though the employee's retirement is occasioned by an occupational injury or sickness. Section 104(a)(1) also does not apply to amounts which are received as compensation for a nonoccupational injury or sickness nor to amounts received as compensation for a nonoccupational injury or sickness to the extent that they are in excess of the amount provided in the applicable workmen's compensation act or acts.

You are of the opinion that since the Tax Court in *Blackburn v. Commissioner*, 15 T.C. 336 (1950), held that payments made under section 4800 of the Y Labor Code were not payments under a workmen's compensation act of a nature intended by Congress in section 22(b)(5) of the 1939 Code (now section 104(a)(1) of the 1954 Code) to be excluded from gross income, payments made under sections 253 and 167 of X which are similar to payments made under section 4800 of the Y Labor Code would also not be excluded from gross income. Further, you believe that if the Internal Revenue Service concludes that the payments made under sections 253 and 167 of X are excludable under section 104(a) of the Code, then section 1.104-1(b) of the regulations requires that any amount that is in excess of the amount provided in sections 4652--4654 of the Y Labor Code is not excludable from gross income.

The Internal Revenue Service in Rev. Rul. 68-10, 1968-1 C.B. 50, held that

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total payments made by a Y county to an employee under section 4850 and pursuant to section 4853 of the Y Labor Code, because of an occupational injury or illness arising out of and in the course of the employee's duties are in the nature of and in lieu of workmen's compensation, and such payments are excludable from the employee's gross income under section 104(a)(1) of the Code. Rev. Rul. 68-10 further held that the payments are excludable even if they are in excess of the normal disability benefits payable under a workmen's compensation act.

The facts presented in the instant case indicate that the provisions of sections 253 and 167 of X are very similar to the provisions of sections 4850 and 4853 of the Labor Code. Further, the Service is not following the position set forth in the Blackburn case but rather is following the position set forth in the case of Hawthorne v. City of Beverly Hills et al., 245 P.2d 352 (1952), which held that salary in lieu of temporary disability payments, to a fireman (under section 4850 of the Labor Code) who is a member of the State Employees' Retirement System, is not salary as such, but is compensation within the meaning of the workmen's compensation act.

Concerning your second ruling request, it should be noted that the Service does not give a narrow interpretation to the provisions in section 1.104-1(b) of the regulations that restricts the section 104(a)(1) exclusion to amounts that are not in excess of the applicable workmen's compensation act or acts. The Service has incorporated 'statutes in the nature of a workmen's compensation act', such as sections 252 and 167 of X, within the meaning of the phrase 'applicable workmen's compensation act or acts'. As long as benefits are received under a statute in the nature of a workmen's compensation act, they qualify for the exclusion of section 104(a)(1) of the Code regardless of the existence and applicability of formal workmen's compensation acts.

Accordingly, based on the information submitted, the entire payment made to an employee under sections 253 and 167 of X are excludable under section 104(a)(1) of the Code.

Sincerely yours,

Rudolf M. Planert

Acting Chief

Individual Income Tax Branch

This document may not be used or cited as precedent. Section 6110(j)(3) of the Internal Revenue Code.

END OF DOCUMENT

ORDINANCE NO:

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING CHAPTER 3.04 OF TITLE 3 OF THE SAN JOSE MUNICIPAL CODE TO PROVIDE FOR TEMPORARY DISABILITY COMPENSATION FOR CITY FIREFIGHTERS AND POLICE OFFICERS WHO ARE DISABLED IN THE PERFORMANCE OF THEIR DUTIES.

WHEREAS, Local 230 of the International Association of Firefighters, the San Jose Police Officers' Association, and the City have agreed through Memoranda of Understanding that City fire fighters and police officers who are disabled, whether temporarily or permanently; by injury or illness arising out of and in the course of their duties, are entitled to a leave of absence without loss of salary while so disabled; and

WHEREAS, fire fighters and police officers so disabled are entitled by Memoranda of Understanding to such leave of absence regardless of their period of service with the city; and

WHEREAS, the Memoranda of Understanding require that such leave of absence should not exceed one year, or that earlier date on which a particular fire fighter or police officer is retired on permanent disability pension and is actually receiving disability payments; and

WHEREAS, the Memoranda of Understanding require that such leave of absence should not be deemed to constitute family care and medical leave, as defined in Section 12945.2 of the Government Code, or to reduce the time authorized for family and medical care by Section 12945.2 of the Government Code; and

WHEREAS, Local 230 of the International Association of Firefighters, the San Jose Police Officers' Association, and the City agree that the aforementioned sums always have been intended to qualify and should qualify, under the Internal Revenue Service Code, as amounts received under workmen's compensation acts as compensation for personal injuries or sickness; and

WHEREAS, Local 230 of the International Association of Firefighters, the San Jose Police Officers' Association, and the City agree that the provisions in the fire and police Memoranda of Understanding are not sufficient to ensure that the aforementioned sums qualify, under the Internal Revenue Service Code, as amounts received under workmen's compensation acts as compensation for personal injuries or sickness; and

WHEREAS, Local 230 of the International Association of Firefighters, the San Jose Police Officers' Association, and the City agree these provisions regarding entitlement to these leaves of absence without loss of salary while so disabled should be incorporated into the Municipal Code so as to qualify as amounts received under workmen's compensation acts (Division IV of the Labor Code of the State of California) as compensation for personal injuries or sickness and therefore to qualify for certain tax exemptions under the Internal Revenue Service Code;

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

Chapter 3.04 of Title 3 of the San Jose Municipal Code is amended by adding a part to be numbered and entitled and to read as follows:

3.04.1310 Temporary disability compensation for city firefighters and police officers who are disabled in the performance of their duties.

(a) Whenever any San Jose City employee listed in subdivision (b) is disabled, by an injury or an illness arising out of and in the course of his or her duties, he or she shall be entitled, regardless of his or her period of service with the city, to temporary disability payments in an amount equal to his or her regular salary less the sum which would be deducted therefrom pursuant to Section 1504 of the Charter of the City of San Jose, while so disabled. Provided, however, that such employees must be entitled to temporary disability compensation under the workers' compensation provisions of Division I or Division IV of the Labor Code of the State of California during the entire time for which the payments are received.

(b) The persons eligible under subdivision (a) include all of the following:

(1) sworn city firefighters

(2) sworn city police officers.

(c) Payments made under subdivision (a) shall be considered as amounts received under worker's compensation acts (Division IV of the Labor Code of the State of California) and as payments in the nature of workers' compensation acts as compensation for personal injury incurred in the course of employment.

(d) Notwithstanding any provision of the California Labor Code in regard to a limitation on the duration of temporary disability benefits, the temporary disability benefits paid pursuant to this ordinance for a single injury causing temporary disability shall not be payable for a period in excess of five years from the date of injury. The total amount paid for a single injury for temporary disability shall not exceed the equivalent of 52 weeks of full-time hours.

(e) Receipt of such payments shall be subject to all alternative employment provisions set forth in the memoranda of understanding between the City and the exclusive bargaining representatives for the employees listed in subsection (b) above.

(f) No leave of absence taken pursuant to this section shall be deemed to constitute family care and medical leave, as defined in Section 12945.2 of the Government

Code, or to reduce the time authorized for family and medical care by Section 12945.2 of the Government Code.

Passed for Publication of Title this _____ day of _____, 2008,
by the following vote:

Ayes:

Noes:

Absent:

Disqualified:

CHUCK REED
Mayor

ATTEST:

LEE PRICE
City Clerk

Firefighter Bill of Rights - Assembly Bill No. 220 (AB220) attached

Background:

On January 1, 2008, the state of California set forth into law the "Firefighter Bill of Rights" (AB220). This law sets forth a secure and consistent procedural standard for all firefighters. It is designed to apply common-sense principles of fairness and professionalism to the process of investigating and disciplining firefighters.

Since the enactment of the law, and as a matter of process, Local 230 has been attempting to incorporate this law into the current MOA and Discipline procedure manuals to no avail. The Fire Department and the Office of Employee Relations have refused to Meet and Confer or recognize the need to change our outdated and now illegal, investigative, discipline and appeal procedures.

Currently, Local 230 has been forced to petition with the courts to compel arbitration over this issue to implement the law of the land.

San Jose firefighters are and should be held to the highest public standard. Local 230 embraces these high standards but they must be applied fairly and equally.

By incorporating the Firefighter Bill of Rights (AB220) into the MOA and Discipline procedure manuals San Jose would come into compliance with the law and would ensure San Jose Firefighters will be treated under similar circumstances the same as all other firefighters in California.

This is a NO cost item offer.